

JUN 29 1992

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

In the matter of

# Amendment of Parts 1, 2 and 21 of the Commission's Rules Governing Use of Frequencies in the 2.1 and 2.5 GHz Bands

PR Docket No. 92-080

**ORIGINAL  
FILE**

**COMMENTS OF INTERNATIONAL COMMUNICATIONS GROUP, INC.**

Submitted by:

INTERNATIONAL COMMUNICATIONS  
GROUP, INC.  
875 West Point Drive  
Suite 510  
West Lake, OH 44145

June 29, 1992

No. of Copies rec'd  
List A C D E

## TABLE OF CONTENTS

Summary		i
I.	Background	1
II.	A Strict Mileage Separation Criteria for Co- And Adjacent Channel Stations Is Not Necessary and Not Desirable	2
III	A Short-Space Derating Table is Unnecessary	6
IV	If the Proposed Separation Standard is Adopted It Should Not Be Applied Retroactively	6
V	The Mass Media Bureau Should Regulate MDS	10
VI	Conclusion	13

## **SUMMARY**

ICG is in full concurrence with the FCC's determination that the rules and policies regarding MDS and ITFS application processing must be overhauled. The system is backlogged and as the wireless cable industry attracts increasing numbers of investors the need to have an efficient system for obtaining the necessary FCC authorizations is crucial. However, ICG strongly urges the FCC to resist instituting measures that would supposedly reduce the processing burden, but would have a substantive detrimental effect on the industry as a whole. The current interference analysis requirements of the Rules should be maintained and strict co- and adjacent channel mileage separation standards should be rejected. Likewise, as a matter of fundamental fairness to pending applicants and tentative selectees, the retroactive application of any fixed mileage separation criterion should not be implemented. It is not necessary and will lead to a contraction rather than expansion of the wireless cable industry.

ICG applauds the FCC's recognition that application processing should be consolidated. It urges the FCC to give the Mass Media Bureau jurisdiction over all channels utilized by ITFS/MDS operators so that a comprehensive approach to processing and granting applications can be achieved. Likewise, it is believed that such a consolidation under the aegis of the Mass Media Bureau will alleviate the perceived need to adopt fixed mileage separation criteria in order to resolve the application processing logjam.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the matter of	)	
	)	
Amendment of Parts 1, 2 and 21	)	PR Docket No. 92-80
of the FCC's Rules	)	
Governing Use of Frequencies	)	
in the 2.1 and 2.5 GHz Bands	)	

**COMMENTS OF INTERNATIONAL COMMUNICATIONS GROUP, INC.**

International Communications Group, Inc. ("ICG"), hereby submits its Comments in the above referenced proceeding.

**I. Background**

ICG provides engineering and technical consulting services to clients in the telecommunications field. ICG prepares engineering interference analyses and technical exhibits for its clients filing FCC applicants in a variety of broadcast services including the Multichannel Multipoint Distribution Service ("MMDS") and the Instructional Fixed Television Service ("ITFS"). Thus, ICG and its numerous microwave broadcast clients have a substantial interest in the proceeding.

In general ICG wholeheartedly supports the Federal Communications Commission's ("FCC") recognition that it needs to revamp the processing of microwave applications (MMDS and ITFS). The wireless cable industry which utilizes the MDS and ITFS spectrums is expanding at a rapid pace and needs the benefits of a streamlined FCC application process in order to thrive.

ICG's engineering staff has reviewed the FCC's Notice of Proposed Rulemaking ("Notice") in the above referenced proceeding and is concerned about certain technical aspects of the proposal, in particular, the proposed fixed separation standard for co- and adjacent-channel stations and the retroactive application of such a proposal. In addition, ICG staff has worked extensively with the current FCC processing procedure for microwave applications and is concerned that some of the proposals in the Notice will increase, not decrease, the backlog of applications. ICG offers these Comments to assist the FCC in developing rules and policies that will achieve the public interest goal of expansion of wireless cable service to communities throughout the country.

**II. A Strict Mileage Separation Criteria For Co- And Adjacent Channel Stations Is Not Necessary and Not Desirable.**

The Notice, at ¶12, proposes new rules regarding the interference protection criteria currently contained in FCC Rules at 47 C.F.R. §21.902. Appendix B to the Notice reflected the proposed rule changes to Part 21.902 and other related sections of Part 21. As the Notice states, current interference protection policies require MDS applicants to submit detailed analyses of the potential for harmful interference to co- and adjacent-channel MDS and ITFS stations. By requiring such analyses, this policy permits applicants the flexibility to establish wireless cable service in a given area after demonstrating noninterference to existing co- and adjacent-channel stations. The current procedures give

operators the enormous advantage of having flexibility to design individual systems that meet individual needs in particular circumstances. This is important because the technical parameters of broadcasting video signals using microwave frequencies is not black and white: there is a lot of gray area involved and current rules allow operators to use innovative engineering designs to fit into the gray area.

The Notice proposes to eliminate the current noninterference criteria and replace it with a strict mileage separation standard requiring that proposed facilities be located at least 80 kilometers from all existing and previously applied for co-channel stations, and at least 50 kilometers from all such adjacent-channel stations. Applicants would no longer be allowed to engineer their systems to provide 45 db or 0 db desired-to-undesired signal (C/I) ratio of co-channel or adjacent channel interference protection. The only advantage of the proposed alternative to interference analyses is that it will supposedly permit quicker processing of pending applications, as it would eliminate the need to verify and analyze each applicant's interference showing.

ICG is convinced that the adoption of a fixed separation standard will severely cripple the wireless cable industry and is not in the public interest. The adoption of rigid separation requirements would inhibit the development of competitive wireless cable systems because it would tie operators hands behind their

backs and prohibit them from seeking workable engineering solutions to interference problems. It would mean that many existing operators could not add channel capacity. Since most licensees depend on the ability to add more channel capacity to remain competitive, the FCC's proposal could have a devastating effect on the industry.

More importantly, there is no need to change the present criteria in order to increase application processing speed. The technical aspects of the current rules work -- they just need to be applied in a more organized fashion which means more support staff, which could be provided through a reallocation of existing FCC resources. The current interference analysis standard can be rendered more workable from the application processing standpoint by modifying the FCC's approach to processing.

The most workable solution would be the same system the FCC currently follows in the processing of noncommercial FM applications. Aspects of it also apply in the current technical flexibility afforded commercial FM applicants. Even in the commercial FM band the FCC permits applicants to demonstrate shielding and other factors to permit establishment of new stations rather than simply requiring adherence to pre-determined spacing requirements. See, Section 73.215 of the Rules.

Under Section 73.509 of the FCC's Rules, an applicant for a noncommercial FM station can apply for a new station anywhere it can demonstrate compliance with the FCC's interference standards.

The Mass Media Bureau has developed a computer program which analyzes each applicant's proposal according to the technical parameters of the FCC's rules. The Mass Media Bureau staff enters the applicant's technical proposal into its data base and utilizes the computer program to determine whether or not the applicant's proposal complies with FCC rules. This process is effective and efficient and the same process can work effectively with MDS applications.

Since the FCC is proposing to overhaul and update its entire MDS and ITFS data bases and to consolidate them into one data base, there is no reason why it cannot develop a computer program to analyze proposals in the same manner done in the non-commercial FM arena. With this accurate, up-to-date data base, the FCC can prepare a program, in order to determine whether or not any given proposal meets the FCC's existing interference standards. The first step in processing any pending or future MDS or ITFS application would be to run it through the FCC's interference computer program and determine whether or not it meets the current desired-to-undesired system (C/I) ratio for co- and adjacent channel interference set forth in Section 74.903 of the rules. This is a workable solution which can effectively reduce the backlog of applications, yet preserve the flexibility wireless cable operators require in order to be able to establish viable systems.

### **III. A Short-Space Derating Table is Unnecessary.**

In conjunction with its proposed fixed separation standard, or as an alternative thereto, the FCC proposes the use of a table to process short spaced application proposals similar to that used in the Specialized Mobile Radio Services. (Notice at ¶14.) The short-spacing derating table included in Appendix B of the Notice for use by MDS applicants is unnecessary if the FCC maintains its current interference analysis standards. Such a short-spacing derating table, although less constricting than a stand-alone separation criteria, by its very nature still eliminates the operational flexibility that is essential to wireless cable operators.

### **IV. IF THE PROPOSED SEPARATION STANDARD IS ADOPTED, IT SHOULD NOT BE APPLIED RETROACTIVELY**

The Notice suggests, at ¶25, that existing applicants for MDS channels would be required to certify, by a specified date, satisfaction of the proposed new separation standards with respect to both existing co-channel and adjacent channel licensees, as well as all previously filed pending applications. Applications filed or tentative selectees selected prior to the effective date of the new rules would not be summarily dismissed for failure to demonstrate compliance with these new standards; however, the new standards would be applied to the these applicants and tentative selectees retroactively with a window period during which amendments could be filed to bring such applications into

compliance. Those tentative selectees and applicants which fail to comply with the proposed fixed separation standards would be dismissed.

Similarly, applications filed prior to the effective date of the new rules would not be summarily dismissed for failure to have demonstrated satisfaction of the separation standards with respect to all previously applied for co-channel and adjacent channel stations. Rather, all MDS applications for co-channel or adjacent channel stations inside the required separation distances from previously applied for stations would be considered mutually exclusive if timely filed. Depending on the initial date of filing, such applications could be subject to lottery pursuant to 47 C.F.R. §1.972.

Essentially, the FCC would dismiss applications (including those already designated tentative selectee) which could not be amended to meet the proposed separation standard even though such applications were in compliance with all existing rules when filed. Additionally, applications which were not previously mutually exclusive under the existing rules could be deemed mutually exclusive under the proposed fixed mileage separation. The effective result of such a policy would be to subject to lottery procedures applications which are not, under a real-world interference analysis, electronically mutually exclusive. This will result in fewer rather than greater numbers of MDS applications being granted and will thus operate to limit the

establishment of new MDS facilities providing service to the public.

The proposed application of a retroactive separation standards to pending applications and tentative selectees is of paramount concern to ICG. It unfairly saddles these applicants with the requirement of additional expensive engineering studies and then subjects them to dismissal if the studies cannot produce the desired result.

In general, retroactive application of new rules by a federal agency must demonstrate that the retroactive application is reasonable and outweighs the imposition of new and unexpected liabilities and obligations. National Ass'n of Indep. Tel. Producers & Distrib. v. FCC, 502 F. 2d 249, 255 (D.C. Cir. 1974); and NLRB v. Bell Aerospace Co., 416 U.S. 267, 295 (1974).

Such a showing can not be made in this instance. Applicants who timely filed applications under existing rules should be protected from the imposition of the new separation standards when application of such standards would have the harsh result of subjecting the applications to dismissal. The retroactive application of the new rule is not reasonable regarding the real-world interference levels experienced by MDS and ITFS facilities - it is rather a matter of administrative convenience. In this case, the administrative convenience factor (which is dubious at

best) does not outweigh the imposition of new and unexpected liabilities and obligations on the applicants affected.<sup>1</sup>

Many applicants, including ICG's clients, have spent thousands of dollars in engineering, legal, site acquisition and financial commitment fees to prepare and file their applications. The applicants did so in reliance on the FCC's rules. In fact, the FCC itself has referred to wireless cable as the most viable competitor to conventional cable television service and has encouraged investment in the industry. To change the rules mid-stream in a manner that so adversely affects such applicants is unreasonable.

Perhaps even more importantly, the effect is unduly burdensome vis a vis the unopposed tentative selectees, many of whom have spent tens of thousands of dollars assembling channels, filing applications for additional channels in target markets, finalizing site agreements and financial arrangements, selecting equipment, arranging for personnel and generally making provisions for the anticipated construction of facilities. To subject such tentative selectees to possible application dismissal is so unduly burdensome as to outweigh any perceived administrative convenience that might result from a strict separation standard.

The dubious nature of the perceived benefits of retroactive application of the new separation standard cannot outweigh the

---

<sup>1</sup> This is especially relevant in this case where the level of administrative convenience resulting from the new separation standard is speculative at best and where other more reliable processing techniques are available for determining co- and adjacent channel interference.

enormous burden of such a standard on the applicants and the harsh result of application dismissal if the standard is not met. Retroactive application of this new rule can only lead to protracted litigation from dismissed applicants, which will needlessly drain FCC resources and result in further delay in the MDS and ITFS licensing process. It would, in fact, frustrate the entire purpose of the Notice which is to alleviate the licensing backlog and streamline the processing procedure.

**V. The Mass Media Bureau Should Regulate MDS.**

ICG staff has worked with all of the various Bureaus and Divisions of the FCC that have had regulatory authority over ITFS, MDS and OFS channel applications. Based on its experience, ICG believes that consolidation of processing of ITFS and MDS applications should occur under the Mass Media Bureau with assistance from the Private Radio Bureau.

MDS, like ITFS, is a broad band broadcast service. The evolution of wireless cable operations has resulted in the majority of operators electing noncommon carrier status and thus shifting away from the policies and rules that govern common carrier type operations. The service itself is a broadcast medium and its technical operation is akin to that of the other services regulated by the Mass Media Bureau, such as ITFS.

Currently the wireless cable operator is subject to rules and regulations of both the Mass Media and Common Carrier operations. Additionally, the Notice at ¶¶ 6 and 7 proposes that processing of

applications by the Private Radio Bureau may result in the most expeditious turn around. However, given the characteristics of the service, the Mass Media Bureau is the most logical Bureau to retain jurisdiction of there facilities.

It is recognized that the FCC has an enormous resource in the Private Radio Licensing Division processing facility located in Gettysburg, Pennsylvania. Relocation of processing of many Private Radio Service applications to the Gettysburg facility has resulted in more efficient and expeditious licensing of stations. Thus, in order to take advantage of the FCC's existing resources, it is proposed that the FCC utilize the Gettysburg, Pennsylvania licensing division of the Private Radio Bureau to develop and maintain a combined data base of ITFS and MDS applications and licensed facilities. All pending applications as well as existing licenses can be processed into the data base at the Gettysburg facility. All future applications can be initially routed through the Gettysburg office with the staff there being responsible for placing the applications on public notice. This would help assure that applications are promptly placed on public notice and give applicants a definitive data base on which to base their interference protection analyses.

After initial processing in Gettysburg, applications could be routed to the Mass Media Bureau for analysis of their technical proposal. The FCC's engineering resources which are currently distributed throughout the Domestic Radio Branch and the

Distribution Facilities Branch could be consolidated into a single branch of the Mass Media Bureau. This would expand the FCC's engineering resources to analyze applicant's technical proposals and interference studies, it would eliminate the current duplication of engineering resources which currently exist. It would also contribute to centralized management so that applicants can resolve ITFS and MDS conflicts in a consolidated branch of the FCC which has access to one consolidated data base. It will eliminate disputes over application processing/grant policies which currently occurs because policies governing wireless operations are implemented by diverse sections of the FCC.

Consolidation of the wireless cable operations in the Mass Media Bureau will also permit a market approach to the grant of the various difference service licenses necessary to implement a wireless cable operation. Currently, applicants attempting to aggregate channels in a given market can file commercial ITFS applications, MDS applications for E and F channels as well as MDS 1, MDS 2, MDS 2A and MDS H-channel. In addition, they can obtain excess channel capacity lease agreements with ITFS operators. Because these applications are processed by different, branches of the FCC the result is that such applications are put on public notice and granted at wildly diverse intervals. This is an enormous problem for wireless cable operators because it results in a variety of different construction deadlines for different channel groups. The real-world realities of wireless cable

operations dictate the launch of a system with a core group of channels. Dribbling channel grants out to operators over a period of time undermines the ability of wireless cable operators to launch coherent comprehensive services. This uncertainty would be eliminated by consolidation of all applications in the Mass Media Bureau and a market-by-market processing approach to new applications once the backlog is eliminated.<sup>2</sup>

Consolidation of application processing in the Mass Media Bureau will also permit the institution of a policy to grant requests for expedited consideration submitted by existing operators. Existing operators are currently being hampered by the processing delays incurred when applications for new channels are submitted to the FCC.

## **VI. Conclusion.**

ICG is in full concurrence with the FCC's determination that the rules and policies regarding MDS and ITFS application processing must be overhauled. The system is backlogged and as the wireless cable industry attracts increasing numbers of investors the need to have an efficient system for obtaining the necessary FCC authorizations is crucial. However, ICG strongly urges the FCC

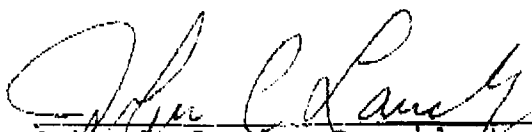
---

<sup>2</sup> In this vein, it is noted that there is urgent need for the FCC to grant some form of relief to wireless cable operators who have differing construction deadlines for various channel groups. The requirements that operators construct four channel groups or even single H channels by different deadlines because the licenses are issued at different times is onerous and requires resolution.

to resist instituting measures that would supposedly reduce the processing burden, but would have a substantive detrimental effect on the industry as a whole. The current interference analysis requirements of the Rules should be maintained and strict co- and adjacent channel mileage separation standards should be rejected. Likewise, as a matter of fundamental fairness to pending applicants and tentative selectees, the retroactive application of any fixed mileage separation criterion should not be implemented. It is not necessary and will lead to a contraction rather than expansion of the wireless cable industry.

ICG applauds the FCC's recognition that application processing should be consolidated. It urges the FCC to give the Mass Media Bureau jurisdiction over all channels utilized by ITFS/MDS operators so that a comprehensive approach to processing and granting applications can be achieved. Likewise, it is believed that such a consolidation under the aegis of the Mass Media Bureau will alleviate the perceived need to adopt fixed mileage separation criteria in order to resolve the application processing logjam.

Respectfully submitted,

By:   
John C. Landy, President  
International Communications  
Group, Inc.  
875 West Point Drive  
Suite 510  
West Lake, OH 44145